

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

KELLY DWYER,

Plaintiff,

V.

UNITEDHEALTHCARE INSURANCE  
COMPANY,

Defendant.

**Civil Action No. 1:17-cv-00439(LY)**

## STIPULATION

IT IS HEREBY STIPULATED AND AGREED, by the undersigned counsel for all parties,

that:

1. Plaintiff hereby withdraws the Second Count of his Complaint for equitable relief under 29 U.S.C. §1132(a)(1)(B), as well as any potential claim for equitable relief under 29 U.S.C. §1132(a)(3) or for equitable relief other than the relief sought in the First Count of Plaintiff's Complaint for the wrongful denial of benefits under; 29 U.S.C. §1132(a)(1)(B);

2. Plaintiff's remaining claims in this matter are for relief under 29 U.S.C. §1132(a)(1)(B) for the wrongful denial of benefits, pre- and post-judgment interest, and attorneys' fees under 29 U.S.C. §1132(g) ;

3. Defendant withdraws the Affirmative Defenses in its Answer numbered 9, 11, and 12, and limits its Affirmative Defense numbered 16 (alleging failure to exhaust administrative remedies) to Plaintiff's claims regarding his claimed request for a "gap exception" under the Plan; and

Defenses. [Document 20].

---

James C. Plummer, TBA #16075700  
Amar Raval, TBA #24046682  
Berg Plummer Johnson & Raval  
Attorneys for Plaintiff  
4203 Montrose Boulevard, Suite 260  
Houston, Texas 77006  
(713) 526-0200  
(832) 615-2665 (fax)  
*Attorneys for Plaintiff*

---

Michael H. Bernstein b/p ARaval

Michael H. Bernstein, *Pro Hac Vice*  
ROBINSON & COLE, LLP  
CHRYSLER EAST BUILDING  
666 THIRD AVENUE, 20TH FLOOR  
NEW YORK, NY 10017  
MAIN (212) 451-2900  
FAX (212) 451-2999  
*Attorney for Defendant*

SO ORDERED.

---

Hon. Mark Lane  
United States Magistrate District Judge